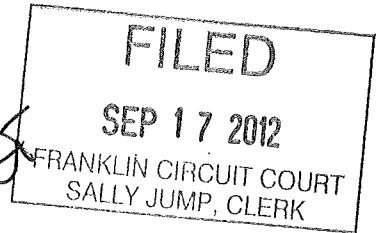


COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NOS. 10-CI-1867 & 10-CI-1868
(Consolidated)
DIVISION I



COMMONWEALTH OF KENTUCKY,
ENERGY AND ENVIRONMENT CABINET

PLAINTIFF

And

APPALACHIAN VOICES, INC.,
WATERKEEPER ALLIANCE, INC.,
KENTUCKY RIVERKEEPER, INC.,
PAT BANKS, LANNY EVANS,
THOMAS H. BONNY,
And WINSTON MERRILL COMBS

INTERVENING PLAINTIFFS

V. **STATUS REPORT OF ENERGY AND ENVIRONMENT CABINET**

FRASURE CREEK MINING, LLC

And

ICG HAZARD, LLC,
ICG KNOTT COUNTY, LLC,
ICG EAST KENTUCKY, LLC, AND POWELL
MOUNTAIN ENERGY, LLC

DEFENDANTS

Comes the Plaintiff, Energy and Environment Cabinet (hereinafter "Cabinet"), by counsel, and in compliance with the Court's Order entered July 19, 2012 makes its report of the status of the cases captioned above:

1. Regarding Civil Action No. 10-CI-01868, the parties have reached an agreement in principle resolving all claims made in the case. The agreement affirms the civil penalty assessed by the Cabinet and the remedial measures imposed on ICG LLC, et al in the Consent Judgment currently pending before the Court. In addition, the agreement affirms

and incorporates additional assessed penalties as proposed by the Cabinet for violations that have occurred since the Cabinet's filing of the Consent Judgment. In lieu of paying a civil penalty the Cabinet crafted the following Supplemental Environmental Projects to be funded by ICG: (1) a payment of three hundred and thirty-five thousand dollars (\$335,000.00) to the Kentucky PRIDE program to be used to eliminate straight pipes of residential sanitary waste to waters of the Commonwealth, and (2) a payment of two hundred forty thousand dollars (\$240,000.00) to supplement funding for the Department for Natural Resources Cumulative Hydrologic Impact Analysis (CHIA) studies. In addition, the agreement provides for the assessment of stipulated penalties for future violations. A draft of a Consent Judgment embodying the parties' current agreement is being finalized and will then be circulated for signatures. It is the intention of the parties that a Consent Judgment based on the agreement in principle will also resolve the claims of the parties pending at the Cabinet's Office of Administrative Hearings, File No. DOW-33598-047 and the claims of Plaintiff-Intervenors against ICG pursuant to the citizen suit provisions of 33 U.S.C. §1365 pending in the United States District Court for the Eastern District of Kentucky, *Appalachian Voices, Inc. v. ICG, LLC, et al.*, Docket number 7-11-cv-168.

2. Regarding Civil Action No. 10-CI-01867, the parties have not reached an agreement resolving the Cabinet's claims against Frasure Creek Mining, LLC. Frasure Creek has asserted to the Cabinet that its financial circumstances have changed since the Cabinet and Frasure Creek entered into the proposed Consent Judgment previously tendered to the Court. Frasure Creek is not currently engaged in active coal mining from any of its permits in Kentucky and its primary coal sale contract has been voided by the

purchaser. The company has reported that it is restructuring and proceeding to divest itself of its Kentucky mining operations. The Cabinet will continue to work with Frasure Creek and the other parties in an effort to resolve outstanding violations; however, the Cabinet's first responsibility is to see that Frasure Creek's surface mining permits are properly reclaimed. Frasure Creek is current with its reclamation obligations. The Cabinet will continue working with Frasure Creek to ensure that its reclamation obligations are completed.

Respectfully submitted,

ENERGY AND ENVIRONMENT CABINET

A handwritten signature in dark ink, reading "Mary Stephens", with a horizontal line drawn through the middle of the signature.

C. Michael Haines

Mary A. Stephens

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COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Status Report of the Energy and Environment Cabinet was served on the following by regular U.S. mail, postage pre-paid and electronically this 17~~th~~ day of September, 2012 to the following:

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